

In the Matter of)
) AU Docket No. 13-53
Tribal Mobility Fund Phase I Auction)
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A petition for reconsideration that raises new facts or arguments can be granted if "the designated authority determines that consideration of the facts or arguments relied on is required in the public interest."³ Here, consideration of SBI's Petition is in the public interest. When the Bureaus originally set forth a general standard by which companies could challenge the list of potentially eligible census blocks that lack 3G or better service, challenge standards were open ended, strongly suggesting to carriers that any reasonable showing supported by evidence would be sufficient for purposes of adding census blocks to the list of eligible areas.⁴

In response, SBI provided a comprehensive showing of information generated through drive tests, including a map depicting the drive test results, a list of census blocks found by SBI to lack reliable 3G or 4G service and that meet the Commission's requirement for eligibility, and Declarations from SBI's Director of Engineering, and SBI's Consulting Engineer, which described, with specificity, how these drive tests were conducted and stating that most of the Eastern Agency surveyed lacked 3G or better coverage consistent with the FCC's coverage standard for recipients of Mobility Fund support. SBI had every expectation that this showing was reasonable and would satisfy the general standard outlined by the Bureaus for a census block challenge.

The Bureaus did not reject SBI's data as somehow inaccurate or flawed, but instead, the Bureaus changed their general standard for a census block challenge into a more specific one that included a list of specific criteria that needed to be specified and met in order to expand the list of eligible census blocks. This new criteria is not set forth in the FCC's rules. In effect, the

³ See 47 C.F.R. Section 1.106(c)(2).

⁴ See *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013; Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements*, Public Notice, 28 FCC Rcd. 2764, 2772-73, ¶ 21 (rel. Mar. 29, 2013) ("For Auction 901, the Bureaus did not make changes to potentially eligible areas based on submissions making assertions of coverage without any supporting evidence.").

Bureaus created, *ad hoc*, a new set of rules for census block challenges and then applied the new rules to SBI. Under the circumstances, the right thing to do is to allow an applicant, such as SBI, the opportunity to meet the requirement.

The importance and impact of the Bureaus' decisions in this proceeding to the public cannot be overstated. An incorrect decision by the Bureaus to exclude certain census blocks from Tribal Mobility Fund eligibility will decrease auction participation and likely set back excluded areas – areas excluded incorrectly – for years by seriously delaying the rollout of 3G or 4G mobile broadband service to individuals and businesses. Such a result is clearly not in the public interest. When in doubt, particularly in areas as traditionally underserved as Navajo, the Bureaus must consider all of the information put in front of them and make sure that they are making the most informed decisions possible when they include or exclude a census block from eligibility.

SBI categorically rejects the idea that any other carrier is today providing a robust 3G or 4G mobile service on the Eastern Agency, and it has submitted drive tests to prove that.⁵ To reject this showing without considering the additional information set forth in the SBI Petition would not be in the public interest. If SBI is correct, without support to the Eastern Agency, residents of this remote tribal area will likely be relegated to second class status indefinitely, as no carrier will build a robust network on its own.

CommNet correctly claims that SBI did not drive test CommNet/NTUA's network. There are several reasons for that. First, at the time of SBI's drive test, CommNet/NTUA was not offering a commercial mobile voice or broadband product offering in the tested area. It

⁵ With regard to its drive tests, SBI has previously advised the Commission that, in the Eastern Agency, if a drive test is conducted on a major road in a square pattern and no coverage is shown, the Commission can be assured – and common sense dictates – that there is also no coverage inside the same square.

appears that CommNet/NTUA has done a "soft launch" of its network, but as of the SBI drive test date, CommNet had no commercial mobile wireless offering. Second, based on SBI's diligent investigation, CommNet/NTUA is not offering a mobile service. Their network is limited to fixed broadband connections using laptop cards (e.g., USB dongle) and similar devices. They are not offering mobile handsets in the commercial marketplace. Third, SBI diligently attempted to acquire a handset or other mobile device and could find no commercial store or web offering from CommNet/NTUA that made such a product available.

In the Joint Opposition, CommNet/NTUA carefully avoided admitting that they are not offering mobile voice and data in the affected area. However, in the absence of such a showing of commercial mobile voice and data services by CommNet/NTUA, the FCC should conclude that no such offerings exist.

Respectfully submitted,



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September 23, 2013

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CERTIFICATE OF SERVICE

I, David A LaFuria, hereby certify that on the 23rd day of September 2013, I caused a true and correct copy of the foregoing Reply to be sent, via first-class mail, to:

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